

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Waiver of Universal Service High-Cost Filing Deadlines)	WC Docket No. 08-71
Connect America Fund)	WC Docket No. 10-90
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Toledo Telephone Co. d/b/a ToledoTel (SAC #522447))	
Petition for Waiver of Section 54.1306(a)(3) Filing Deadline)	
For Submission to National Exchange Carrier Association of)	
Updated Section 54.1305 Information for the Calculation of)	
High Cost Loop Support)	

**PETITION FOR WAIVER OF SECTION 54.1306(a)(3) DEADLINE
FOR SUBMISSION OF UPDATED HIGH COST LOOP SUPPORT DATA**

Toledo Telephone Co., d/b/a ToledoTel (“ToledoTel”; Study Area Code 522447), pursuant to Section 1.3 of the Commission’s Rules, requests waiver of the March 30, 2017 deadline established by Section 54.1306(a)(3) of the Rules for the filing with the National Exchange Carrier Association (“NECA”) of updated Section 54.1305 data for the period from October 1, 2015 to September 30, 2016 with respect to the calculation of High Cost Loop Support (“HCLS”).

During the late morning of Friday, March 31, 2017, ToledoTel’s cost consultants uploaded the files for its Section 54.1306(a)(3) submission to the NECA portal designated for the receipt of such filings. The filing was successfully uploaded. However, ToledoTel’s cost consultant was subsequently notified by NECA that the filing was a day late and would not be accepted. The email correspondence attached as Exhibit A confirms the March 31, 2017 filing.

Good cause exists for the requested waiver because: (1) ToledoTel previously had a perfect record of compliance with its Universal Service Fund (“USF”) filing requirements, and

was only a (partial) day late with the subject Section 54.1306(a)(3) filing; (2) the circumstances of this situation are virtually identical to those addressed by the grace period and late filing penalties established by Sections 54.313(j) and 54.314(d) of the Rules with respect to annual USF filing deadlines; (3) grant of the requested waiver will have no significant adverse impact upon NECA's calculation of HCLS support in the aggregate or for ToledoTel in particular; and (4) ToledoTel and its cost consultant have developed and are implementing additional procedures to ensure that all USF filing deadlines are met in the future with respect to the Commission, the Washington Commission, the Universal Service Administrative Company ("USAC") and NECA.

I

Background

ToledoTel is a Washington incumbent local exchange carrier that was founded in 1915 and is headquartered in Toledo, Washington. It is a rural incumbent local exchange carrier ("RLEC") that serves a single exchange (approximately 1,684 access lines) in the community of Toledo and nearby areas in southwestern Washington State.

ToledoTel is on the Rate of Return Path and operates on a cost basis. It has been an eligible telecommunications carrier ("ETC") since the Telecommunications Act of 1996 was first implemented.

ToledoTel has approximately 20 employees, which makes it a small business under the 1,500-employee standard for Regulatory Flexibility Analysis purposes. As a small business, the potential loss of \$66,190 in HCLS revenues in the absence of the requested waiver is bound to have an adverse impact upon ToledoTel's broadband investment and operations.

II

Good Cause Exists for Waiver of the Section 54.1306(a)(3) Deadline

Section 1.3 of the Rules permits rules waivers to be granted for good cause shown. Discretion may be exercised to waive a rule where the particular facts make strict compliance inconsistent with the public interest. Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990). In addition, account may be taken of considerations of hardship, equity, and the effective implementation of public policy on an individual basis. WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

A. Material and Substantial Compliance Efforts

The special circumstances supporting grant of the requested waiver begin with the material, substantial and timely efforts made by ToledoTel to comply with all previously applicable USF requirements and filing deadlines. ToledoTel has provided telephone service since the early 1900s and has been an ETC since the 1996 Act was implemented. ToledoTel has never been cited for a violation of the Commission's USF rules and has never previously missed a USF filing deadline.

ToledoTel's subject Section 54.1306(a)(3) filing was made shortly after 11:00 AM on March 31, 2017. Unfortunately, there was some confusion and the filing inadvertently was assumed to be due on the last day of March rather than on March 30. The filing was successfully uploaded by ToledoTel's cost consultant at approximately 11:17 PM on March 31, 2017, and has been in NECA's possession since that time. However, NECA subsequently informed ToledoTel's consultant that the filing was submitted after the applicable March 30 deadline, and consequently will not be accepted and used by NECA without a waiver.

In previous proceedings, waivers of USF filing deadlines have been granted when the filings were made within 14 days of the deadline. See, for example, *Universal Service High Cost Filing Deadlines et al.*, Order, DA 08-2336, 23 FCC Rcd 15,325, 15,330 (Wireline Comp. Bur. 2008) (filing deadline waived where error promptly remedied by filing of required data within 14 business days after deadline); *Universal Service High Cost Filing Deadlines et al.*, Order, DA14-419, 29 FCC Rcd 3198, 3200-01 (Wireline Comp. Bur. 2014) (filing deadlines waived when required filings were made one to fourteen days after the deadline); *Petitions for Waiver of Universal Service High-Cost Filing Deadlines et al.*, Order, DA 10-107, 25 FCC Rcd 843, 854-55 (Wireline Comp. Bur. 2010) (filing deadlines waived when required filings were made one to fourteen days after the deadline); and *Federal-State Joint Board on Universal Service*, Order, DA 05-3290, 20 FCC Rcd 20,316, 20,317-18 (Wireline Comp. Bur. 2005) (filing deadline waived when filing was submitted five days after deadline).

ToledoTel's submission of its subject Section 54.1306(a)(3) filing to NECA before noon on the day following the March 30 deadline lies well within the 14-day period that has long and repeatedly been recognized to constitute prompt correction of a missed USF filing deadline. In fact, ToledoTel's submission was made at the very beginning of the range found reasonable for waiver purposes – early on the day immediately following the deadline.

Hence, given ToledoTel's heretofore perfect record of timely USF filings with the Commission, USAC and NECA, it is clear that it has made substantial, material, timely and good faith efforts to comply with its USF filing requirements and deadlines.

B. General Commission Rule Regarding Late Filed Annual Reports

While it does not explicitly address Section 54.1306(a)(3) and NECA filings, the general approach adopted in Sections 54.313(j) and 54.314(d) of the Rules to deal with missed certification and data submission deadlines for annual USF reports provides an equitable way to deal with the present circumstances as well as all missed USF filing deadlines. Because ToledoTel has never previously missed a USF filing deadline and because it made its filing within three days of the March 30 deadline, ToledoTel would be entitled to the one-time grace period in Sections 54.313(j)(2) and 54.314(d)(2) of the Rules. And even if it did not qualify for the grace period, ToledoTel would be subject to the loss of only an amount equivalent to seven (7) days of the HCLS support at issue, and not the entire estimated amount of \$66,190 that appears to be in jeopardy.

ToledoTel is aware that Sections 54.313(j) and 54.314(d) apply to specific annual USF filings. However, the language in paragraphs 129 through 138 of *Connect America Fund*, Report and Order, 29 FCC Rcd 15,644 (2014), is sufficiently general that the approach can reasonably and equitably be applied to most or all missed USF filing deadline situations, including the present one.

C. No Adverse Impact on Universal Service Administration

NECA received ToledoTel's uploaded Section 54.1306(a)(3) files shortly after 11:00 AM on March 31, 2017. As of that time, it would appear that NECA would have had the opportunity to do little more than very preliminary processing of the Section 54.1306(a)(3) filings that had been due the previous day. NECA certainly would not have completed its calculations of national average unseparated loop cost per working loop and other HCLS data with respect to the March 30 Section 54.1306(a)(3) filings, and reported them to the Commission and USAC for some time thereafter. Even as of the present date or the date that the requested waiver is granted,

the HCLS data for ToledoTel and any other entities with similar late Section 54.1306(a)(3) filings would not be expected to change materially any NECA calculations based upon the March 30, 2017 HCLS filings.

Hence, grant of ToledoTel's requested waiver will not adversely impact administration of the HCLS or other USF mechanisms.

D. Revision of Internal Procedures to Ensure Timely Future Filings

ToledoTel and its cost consultant will work together to implement new and additional internal procedures to ensure that the subject one-day filing delay will remain the only blemish on ToledoTel's past and future record of timely USF compliance. Both ToledoTel and its cost consultant will designate two employees as the primary and back-up officials responsible for timely ToledoTel compliance with all Commission, Washington Commission, USAC and NECA USF filing requirements and deadlines. The assigned ToledoTel and cost consultant employees are compiling and checking lists of all required or potential USF filing requirements, and will use these lists to prepare, check and confirm an electronic calendar that will list and issue periodic reminders for each and every USF filing deadline with respect to the Commission, Washington Commission, USAC and NECA. Upon receipt of a reminder, the assigned ToledoTel and cost consultant employees will be responsible for communicating with each other by telephone, email or text to verify the filing deadline and designate the person or persons responsible for preparing, reviewing and making the filing. ToledoTel and its cost consultant will review the electronic calendar at least twice a year to check for changes in required USF filings and for modifications of any filing deadlines.

ToledoTel believes that these changes in its internal procedures will ensure that it will not miss any future USF filing deadlines.

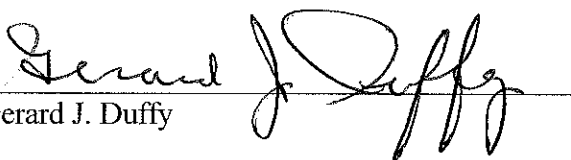
III

Conclusion

Good cause, as well as considerations of hardship, equity, and the effective implementation of the Commission's universal service policies, warrant grant of ToledoTel's requested waiver of the Section 54.1306(a)(3) filing deadline. ToledoTel has a long and spotless record of compliance with USF filing requirements and deadlines prior to the subject March 30, 2017 incident. Even then, ToledoTel was only a single day late – which is well within the established guidelines for USF filing deadline waivers as well as within the grace period adopted for annual Section 54.313 and 54.314 filing deadlines. Grant of the requested waiver will not adversely impact NECA's calculation of HCLS data. Finally, ToledoTel has adopted internal procedures that will ensure its compliance with future Universal Service filing deadlines.

Respectfully submitted,

TOLEDO TELEPHONE CO. d/b/a ToledoTel

By 
Gerard J. Duffy

Its Attorney

Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP
2120 L Street, NW (Suite 300)
Washington, DC 20037
Phone: (202) 659-0830
Facsimile: (202) 828-5568
Email: gjd@bloostonlaw.com

Dated: April 20, 2017

Exhibit A

Gerard J. Duffy

From: Chad Duval <Chad.Duval@mossadams.com>
Sent: Monday, April 17, 2017 12:38 PM
To: Gerard J. Duffy
Subject: FW: NECA Portal Upload Confirmation

Gerry,

Here is the confirmation from NECA on the Toledo upload. Thanks.




Chad Duval | MOSS ADAMS LLP
National Practice Leader
Communications and Media Practice

3121 W. March Lane, Suite 200
Stockton, CA 95219
D (209) 955-6124 | T (209) 955-6100
C (719) 661-0238 | F (209) 955-6199
www.mossadams.com | *Acumen. Agility. Answers.*

From: Crane, Melody [<mailto:mcrane@neca.org>]
Sent: Monday, April 17, 2017 9:31 AM
To: Robert Jacobs
Cc: Koritnik, Kari
Subject: RE: NECA Portal Upload Confirmation

Hi Rob,

Please see below. Also, please note that the certification included in the PDF was dated 3/31/2017.

 522447_9-30-2015 TB.xlsx	3/31/2017 11:17 AM	Microsoft Excel W...	42 KB
 522447_9-30-2016 TB.xlsx	3/31/2017 11:17 AM	Microsoft Excel W...	27 KB
 522447_Toledo 2016-4 USF Filing.pdf	3/31/2017 11:17 AM	Adobe Acrobat D...	1,334 KB

Mel

CONFIDENTIALITY NOTICE

This e-mail and any attachments are for the sole use of the intended recipients and contain information that may be confidential or legally privileged. If you have received this e-mail in error, please notify the sender by reply e-mail and delete the message. Any disclosure, copying, distribution, or use of this communication by someone other than the intended recipient is prohibited.